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7 ANTARES REINSURANCE COMPANY  
8 LIMITED,  
9 Plaintiff,  
10 v.  
11 NATIONAL TRANSPORTATION  
12 ASSOCIATES, INC., et al.,  
13 Defendants.  
14

Case No. 23-cv-00113-JST

**ORDER GRANTING MOTION TO  
TRANSFER VENUE**

Re: ECF No. 26

14 Before the Court is Defendants' motion to transfer venue. ECF No. 26. The Court will  
15 grant the motion.

16 **I. BACKGROUND**

17 Plaintiff Antares Reinsurance Company Limited ("Antares") is a reinsurance corporation  
18 organized in Bermuda. ECF No. 1 ¶¶ 1, 10. Defendant National Transportation Associates, Inc.  
19 ("NTA") and Defendant Superior Risk Management, Inc. ("SRM") are affiliate companies  
20 organized in California. ECF No. 1 ¶¶ 2-3, 43. SRM and NTA maintain corporate offices in  
21 Pleasanton, California, and Westlake, Texas. ECF No. 1 ¶¶ 2-3; ECF No. 28 ¶ 5.

22 In May 2017, United Specialty Insurance Company ("USIC"), which is not a party to this  
23 suit, entered into two reinsurance agreements with NTA: the Quota Share Agreement ("QSA") and  
24 the General Agency Agreement ("GAA"). ECF No. 1 ¶ 9. Antares and other reinsurance  
25 companies are parties to both the QSA and the GAA. ECF No. 1 ¶ 10. Both agreements contain a  
26 forum-selection clause which states:

27 This agreement shall be deemed performable at the Company's  
28 administrative office in Bedford, Texas, and it is agreed that the venue  
of any controversy arising out of this Agreement, or [any breach

1 thereof/for the breach thereof]<sup>1</sup>, shall be in Tarrant County, Texas.  
2 ECF Nos. 28-1 at 22; ECF No. 28-2 at 13.

3 In July 2021, USIC filed suit against SRM in the Northern District of California. *United*  
4 *Specialty Ins. Co. v. Superior Risk Mgmt., Inc.* (“USIC Action”), No. 21-cv-05662 (N.D. Cal. July  
5 31, 2021), ECF No. 1. In that case, NTA filed a third-party complaint against Antares.<sup>2</sup> *USIC*  
6 *Action*, No. 21-cv-05662, ECF No. 66. NTA’s third-party complaint asserts that jurisdiction in the  
7 Northern District of California is proper for the “instant action.” *Id.* For the purposes of the USIC  
8 Action, Antares, NTA, and USIC executed a venue stipulation, which states, in relevant part:  
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10 [T]he Parties waive the Tarrant County, Texas venue selection  
11 provisions set forth above in the GAA and [QSA] solely for the  
12 purposes of the Current Dispute and agree that the United States  
13 District Court for the Northern District of California is the appropriate  
14 venue for resolution of the Current Dispute and any related matters  
15 that arise from the Current Dispute. All other arguments, rights and  
16 defenses of the Parties are unaffected by this stipulation and  
17 agreement. Nothing herein shall be construed as: 1) a waiver of the  
18 venue selection provisions set forth above in the GAA and [QSA] for  
19 any other claim or dispute among the Parties; or 2) as a waiver of any  
20 other terms, obligations and/or conditions set forth in the GAA and  
21 [QSA].

22 ECF No. 28-4 at 3. The USIC Action remains pending.

23 On January 10, 2023, Antares initiated the present action against NTA and SRM in the  
24 Northern District of California, alleging wrongdoing arising from the QSA and GAA, including  
25 breach of those agreements. *Id.*

26 On April 14, 2023, NTA and SRM filed the instant motion to transfer venue. ECF No. 26.  
27 Antares opposes the motion. ECF No. 41.

## 28 **II. JURISDICTION**

29 The Court has jurisdiction pursuant to 28 U.S.C. § 1332.

## 30 **III. LEGAL STANDARD**

31 “For the convenience of parties and witnesses, in the interest of justice, a district court may

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32 <sup>1</sup> The language of the forum-selection clauses varies minimally: the QSA uses “or any breach  
33 thereof,” while the GAA uses “or for the breach thereof.” ECF Nos. 28-1 at 22; ECF No. 28-2 at  
34 13.

35 <sup>2</sup> Antares was previously known as Qatar Reinsurance Company Limited and is so named in the  
36 USIC Action. No. 21-cv-05662, ECF No. 1 at 2.

1 transfer any civil action to any other district or division where it might have been brought or to  
2 any district or division to which all parties have consented.” 28 U.S.C. § 1404(a). Where the  
3 parties’ contract contains a valid forum-selection clause, “Section 1404(a) . . . provides a  
4 mechanism for enforcement of forum-selection clauses that point to a particular federal district.”  
5 *Atl. Marine Constr. Co., Inc. v. U.S. Dist. Ct. for W. Dist. of Tex.*, 571 U.S. 49, 59 (2013).

6 Generally, in evaluating a motion to transfer under Section 1404(a), the court considers  
7 whether venue would be proper in the transferee district, then weighs the convenience of parties,  
8 the convenience of witnesses, and the interest of justice. 28 U.S.C. § 1404(a). Where there is a  
9 forum-selection clause, however, the plaintiff bears the burden of showing why the court should  
10 not transfer the case to the agreed-upon forum, and the court “should not consider arguments about  
11 the parties’ private interests.” *Atl. Marine*, 571 U.S. at 63-64. “[A] proper application of [Section]  
12 1404(a) requires that a valid forum-selection clause be ‘given controlling weight in all but the  
13 most exceptional cases.’” *Id.* at 60 (quoting *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 31  
14 (1988)).

#### 15 **IV. DISCUSSION**

16 SRM and NTA argue that venue is proper in the Northern District of Texas, and that the  
17 forum-selection clause is mandatory, valid, and applicable to this action. Antares does not dispute  
18 that venue is proper in the Northern District of Texas, or that the forum-selection clause is  
19 mandatory, valid, and applicable. Rather, Antares argues that SRM and NTA should be judicially  
20 estopped from enforcing the forum-selection clause because they alleged venue was proper in the  
21 Northern District of California in the USIC Action.

22 “[W]here a party assumes a certain position in a legal proceeding, and succeeds in  
23 maintaining that position, he may not thereafter, simply because his interests have changed,  
24 assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in  
25 the position formerly taken by him.” *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001)  
26 (alteration in original) (quoting *Davis v. Wakelee*, 156 U.S. 680, 689 (1895)). In determining  
27 whether to apply judicial estoppel, courts should consider: (1) whether the “party’s later position  
28 [is] clearly inconsistent with its earlier position”; (2) “whether the party has succeeded in

1 persuading a court to accept that party’s earlier position, so that judicial acceptance of an  
2 inconsistent position in a later proceeding would create the perception that either the first or the  
3 second court was misled”; and (3) “whether the party seeking to assert an inconsistent position  
4 would derive an unfair advantage or impose an unfair detriment on the opposing party if not  
5 estopped.” *Id.* at 750-51.

6 Antares argues that, by filing its third-party complaint in the Northern District of  
7 California in the USIC Action, NTA “[i]mplicitly . . . admitted . . . that the forum[-]selection  
8 clause did not apply to require that such claims be filed in Texas,” which is inconsistent with  
9 Defendants’ current argument concerning the scope of the forum-selection clause. ECF No. 45 at  
10 7. The third-party complaint was filed pursuant to a limited venue stipulation, in which NTA and  
11 Antares “waive[d] the [forum-selection clause] solely for the purposes of the Current Dispute”—  
12 the USIC Action—and which provided that “[n]othing herein shall be construed as [] a waiver of  
13 the [forum-selection clause] for any other claim or dispute among the Parties.” ECF No. 28-4.  
14 Antares does not challenge the validity or scope of this waiver. NTA thus filed the third-party  
15 complaint in the USIC Action pursuant to a valid, limited, and express waiver, in which all parties  
16 agreed that the forum-selection clause would not require that particular dispute to be litigated in  
17 Texas. Where two parties agree to waive a forum-selection clause for a particular dispute, it is not  
18 “clearly inconsistent” to enforce the forum-selection clause as to another dispute outside the scope  
19 of that waiver. *New Hampshire*, 532 U.S. at 750. Accordingly, the Court finds that the first  
20 consideration counsels against the application of judicial estoppel.

21 Further, the third-party complaint in the USIC Action was voluntarily dismissed without  
22 prejudice. Because no Court ruled on the allegations in that complaint, there is no risk that  
23 “judicial acceptance of an inconsistent position in a later proceeding would create the perception  
24 that either the first or the second court was misled.” *New Hampshire*, 532 U.S. at 750. The  
25 second consideration thus also counsels against the application of judicial estoppel.

26 Finally, Antares argues that Defendants gain an unfair advantage by expressly waiving the  
27 forum-selection clause for claims in the USIC Action but asserting its validity in the instant action,  
28 because both complaints involve claims arising out of the relevant contracts. ECF No. 45 at 7.

1 But the parties entered into a venue stipulation which expressly waived the forum-selection clause  
2 for the USIC Action and agreed that the Northern District of California would be the appropriate  
3 venue for the USIC Action “and any related matters that arise from the [USIC Action.]” ECF No.  
4 28-4 at 3. Antares does not contend that this action is a related matter that arises from the USIC  
5 Action. Pursuant to the venue stipulation, all other claims and disputes remain governed by the  
6 forum-selection clause. The Court is not persuaded that the position Defendants assume is  
7 inconsistent or grants them an unfair advantage. *New Hampshire*, 532 U.S. at 751.

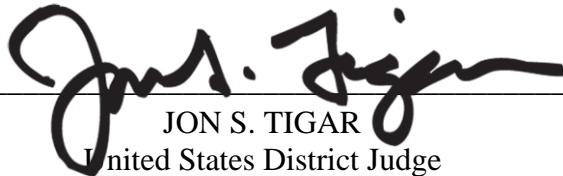
8 The Court concludes that judicial estoppel is inapplicable here, and that Antares has not  
9 met its burden of showing why the Court should not transfer this case. *Atl. Marine*, 571 U.S. at  
10 63-64.

11 **CONCLUSION**

12 Defendants’ motion to transfer venue is granted. The Clerk is directed to transfer the case  
13 to the Northern District of Texas, Fort Worth Division.

14 **IT IS SO ORDERED.**

15 Dated: September 7, 2023



16 JON S. TIGAR  
17 United States District Judge